

## REMARKS

Claims 1, 8-11, 16-18, and 36-42 are currently pending in this application.

Claims 2-7, 12-15, 19-35 have been cancelled without prejudice.

Claims 1 and 10 have been amended.

Claims 36-42 have been added.

The claims of the present Application have been made subject of a restriction requirement and election of species. Applicants elected Group II for prosecution on the merits. The elected claims were further subject to an election of species. Applicants elected the species of bacterial vector *Salmonella typhimurium*.

As suggested by the Examiner, the claims have been amended to make the scope of the claim commensurate with the species elected for examination on the merits. Claim 1 has been amended to incorporate the limitations of cancelled claims 4 and 5. Claim 10 has been amended to incorporate the limitations of cancelled claims 12 and 13. Claims 5 and 13 were identified by the Examiner as generic for the bacterial species. Accordingly, Claims 1 and 10, which incorporate the limitations of claims 5 and 13, respectively, are generic claims that reads on elected Group II and the elected species of *Salmonella typhimurium* bacterial delivery vector. As amended, claims 1 and 10 both specify that there are two plasmid DNAs operably incorporated in an attenuated bacterial delivery vector selected from the group consisting of *Salmonella typhimurium* and *Listeria monocytogenes*. No new matter is added by these amendments.

New claim 36 is directed to a DNA vaccine comprising two plasmid DNAs operably incorporated in an attenuated bacterial vector. Support for claim 36 is found in original claims 1 and 4. New claim 37 is dependent on claim 36 and specifies that the second plasmid DNA encodes CD40LT. Support for claim 37 is found in original claim 9. New claims 36 and 37 are generic claims that read on the DNA vaccines of elected Group II and on the elected species.

New claim 38 is a method of immunizing a mammal against cancer cells that present a carcinoembryonic antigen (CEA) using the vaccine of claim 36. Support for claim 38 is found in original claims 10 and 12. New claim 39 depends on claim 38 and specifies that the mammal is a human. Support for claim 39 is found in original claim 11. New claim

40 depends on claim 38 and specifies that the second plasmid DNA encodes CD40LT. Support for claim 40 is found in original claim 16. New claim 41 depends on claim 38 and specifies that the cells presenting a carcinoembryonic antigen are colon cancer cells. Support for claim 40 is found in original claim 17. New claim 42 depends on claim 38 and specifies that the vaccine is orally administered. Support for claim 42 is found in original claim 18. New claims 38-42 are generic claims that read on the methods of elected Group II and on the elected species.

No new matter is added by any of these new claims.

Claims directed to non-elected subject matter have been cancelled, as have the claims from which the added limitations in claims 1 and 10 were incorporated.

Claims 1, 10, and 16-18 stand rejected under 35 U.S.C. §102(a) as being anticipated by Xiang *et al.* The Xiang *et al.* reference is not prior art under 35 U.S.C. §102(a) against any of the presently pending claims, because this reference is the Applicants own work and was not published before the present invention was made by Applicants.

Enclosed herewith is a Declaration Under Rule 131 from inventors Rong Xiang and Ralph A. Reisfeld, which states that the Xiang *et al.* reference is a manuscript co-authored by the inventors, themselves. The Declaration further states that prior to the October 15, 2001 publication date of Xiang *et al.* the Applicants had conceived, prepared and successfully tested a DNA vaccine effective for eliciting an immune response against cells that present a carcinoembryonic antigen (CEA) comprising a plasmid DNA operably encoding a CEA; and a plasmid DNA operably encoding a CD40 ligand, together with a pharmaceutically acceptable carrier. The Declaration also states that the other co-authors of the Xiang *et al.* reference did not contribute to the invention claimed in this application. In support of their Declaration, the inventors have attached a copy of the manuscript from which the Xiang *et al.* reference was published, said manuscript bearing a true date prior to the October 15, 2001 publication date of Xiang *et al.*.

Accordingly, Applicants respectfully request that the rejection of claims 1, 10, and 16-18 as being anticipated by Xiang *et al.* be withdrawn. All of the present claims are deemed patentable over Xiang *et al.*

Claims 1, 8-11, and 16-18 also stand rejected under 35 U.S.C. §103(a) as being obvious over Xiang *et al.* and Weiner *et al.* In view of the fact that Xiang *et al.* is not prior art

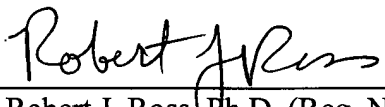
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*vis-a-vis* the present invention, this rejection cannot stand. By itself, the Weiner *et al.* reference does not teach or suggest all of the limitations of the rejected claims or of new claims 36-42. Accordingly, none of the present claims are obvious over Xiang *et al.* and Weiner *et al.*

In view of the foregoing, Applicants deem claims 1, 8-11, 16-18 and 36-42 to be allowable. Early passage of this Application to issue is earnestly solicited.

Respectfully submitted,

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By   
Robert J. Ross, Ph.D. (Reg. No. 45,058)

OLSON & HIERL, LTD.  
20 North Wacker Drive  
36th Floor  
Chicago, Illinois 60606  
(312) 580-1180